REMARKS

On pages 3-6 of the Office Action, the Examiner rejected claims 1, 29, 41, and 69-77 under 35 U.S.C. §103(a) as being unpatentable over the Morton patent.

The Morton patent discloses a method of introducing potential customers to an information service. As shown in Figure 2, a potential customer 220 uses a telephone 240 to communicate with a current customer 280 by way of an information service 260. The information service 260 may provide a wide variety of services such as e-mail, fax, voice mail, answering services, call waiting, conference calling, and processing of requests for Web pages, newsgroup postings, financial information, and audio and multimedia files. The current customer 280 also communicates with the information service 260.

When the potential customer 220 initiates a communication with the current customer 280 as shown by step 310 of Figure 3, the information service 260 at step 320 receives the communication request, and the information service 260 identifies the potential customer 220 at step 330. At step 340, the potential customer 220 is placed on hold while the information service 260 contacts the current customer 280.

During the hold time, the potential customer 220 is allowed to interact with the information service 260 at step 350. Accordingly, the potential customer 220 can browse the Internet, retrieve financial data, select music to be played, or request other information provided by the information service 260. The information service 260 can also provide the potential customer 220 with a features demo. At step 360, the information service 260 tracks its interaction with the potential customer 220.

While the potential customer 220 is interacting with the information service 260, the information service 270 contacts the current customer 280 regarding the communication at step 370. The current customer 280 then has the opportunity to determine how the communication will be handled. For example, the information service 260 can take a message, place the potential customer 220 on hold for a few minutes, or inform the potential customer 220 that the current customer 280 will return the communication at a later time.

At step 380, the information service 260 reports back to the potential customer 220 and handles the communication as instructed.

Figure 4 of the Morton patent shows how the information service 260 processes a communication

initiated by the current customer 280. At step 410, the current customer 280 initiates the communication. At step 420, the information service 260 identifies the potential customer 220. At steps 430, 440, and 450, the information service 260 notifies the current customer 280 of the communication. At step 460, the information service 260 allows the potential customer 220 to interact with the information service 260 as before. At step 470, the information service 260 tracks the interaction with the potential customer 220.

Also, a subsequent interaction between the potential customer 220 and the information service 260 can be initiated by the information service 260. Thus, after an initial contact, the information service 260 can automatically initiate a re-contact with the potential customer 220 to remind the potential customer 220 of the earlier interaction. This re-contact can be initiated based on previous tracking information.

Independent claim 1 is directed to a method in which a note is posted on a first computer at a first party content provider, in which a second party content recipient uses a second computer to electronically engage in an activity related to the note, and in which payment is provided to a third party based upon the activity.

Applicants are having difficulty understanding the Examiner's rejection of independent claim 1. The Examiner states in one paragraph that the Morton patent discloses ". . . wherein the content provider is a first party; performing an activity related to the note, wherein the activity is performed by a content recipient, and wherein the content recipient is a second party; and, providing payment to a third party based upon the activity." Then, the Examiner in the very next paragraph denies that the Morton patent discloses this same subject matter.

Applicants' difficulty is exacerbated by the Examiner's failure to identify in the Morton patent the first party content provider, the second party content recipient, and the third party payment receiver recited in independent claim 1.

Therefore, applicants do not understand how the Examiner is applying the Morton patent to independent claim 1. The Examiner merely makes only general assertions about what the Morton patent discloses and what it does not disclose.

However, applicants will attempt to test the application of the Morton patent to independent claim 1

and, thereby, determine whether the Morton patent is applicable to independent claim 1.

First party content provider of independent claim 1 - The potential customer 220 disclosed in the Morton patent cannot be the first party content provider of independent claim 1 because the potential customer 220 is not a content provider and does not post a note.

The current customer 280 disclosed in the Morton patent cannot be the first party content provider of independent claim 1 because the current customer 280 does not post a note accessible by either the potential customer 220 or the information service 260. At most, the current customer 280 sends an e-mail to the information service 260 which offers to read the e-mail to the potential customer 220. However, sending is not posting.

Finally, there is no disclosure or suggestion in the Morton patent that the information service 260 posts content and, therefore, can be considered to be the first party content provider of independent claim 1. The Morton patent does disclose that the information service 260 may process e-mail messages, voice mail messages, and requests for information from the Internet such as World Wide Web ("Web") pages and newsgroup postings, financial

information, audio and multimedia files, and may include value-added or secondary telephone service such as an answering service, call waiting, and conference calling. None of these activities need involve the posting of content.

The Examiner does not address the issue as to whether it would have been obvious to one of ordinary skill in the art that the potential customer 220, the currently customer 280, or the information service 260 of the Morton patent could have been converted to the first party content provider of independent claim 1. Indeed, it would not have been. The Morton patent is simply not directed to the type of system recited in independent claim 1.

Second party content recipient of independent claim 1 - The potential customer 220 disclosed in the Morton patent cannot be the second party content recipient of independent claim 1 because the potential customer 220 uses the telephone 240 and not a computer for the communication. Indeed, the Morton patent takes great pains to deny use of a computer by the potential customer 220 by stating in its summary that the invention disclosed in the Morton patent is directed to methods for introducing potential customers to an information service

having a voice-based interface and that the invention exploits the social nature of the telephone and the increasing popularity of information services by providing for implicit endorsement of an information service that includes a significant aural component.

Moreover, the Morton patent states later in the summary that, even when the current subscriber 280 composes an e-mail directed to a potential customer, the information service 260 determines the telephone number of the potential customer 220, places a telephone call to the potential customer 220, and offers to read the e-mail to the potential customer.

The current customer 280 disclosed in the Morton patent cannot be the second party content recipient of independent claim 1 because there is no disclosure or suggestion in the Morton patent that the current customer 280 receives any content from either the potential customer 220 or the information service 260.

Finally, the information service 260 disclosed in the Morton patent cannot be the second party content recipient of independent claim 1 because there is no disclosure or suggestion in the Morton patent that the information service 260 receives any content posted

either by the potential customer 220 or by the current customer 280.

The Examiner does not address the issue as to whether it would have been obvious to one of ordinary skill in the art that the potential customer 220, the currently customer 280, or the information service 260 of the Morton patent could have been converted to the second party content recipient of independent claim 1. Indeed, it would not have been. Again, the Morton patent is simply not directed to the type of system recited in independent claim 1.

Third party payment receiver of independent claim 1 - The potential customer 220 disclosed in the Morton patent cannot be the third party payment receiver because there is no disclosure or suggestion in the Morton patent that the potential customer 220 receives any payment.

The current customer 280 disclosed in the Morton patent cannot be the third party payment receiver because there is likewise no disclosure or suggestion in the Morton patent that the current customer 220 receives any payment.

Finally, the information service 260 disclosed in the Morton patent cannot be the third party payment

receiver of independent claim 1 because there is no disclosure or suggestion in the Morton patent that the information service 260 receives payment based upon any activity related to a note posted on a computer either at the potential customer 220 or at the current customer 280.

The Examiner does not specifically address the issue as to whether it would have been obvious to one of ordinary skill in the art that the potential customer 220, the currently customer 280, or the information service 260 of the Morton patent could have been converted to the third party payment receiver of independent claim 1. Indeed, it would not have been. The Morton patent is simply not directed to the type of system recited in independent claim 1.

The Examiner does point out that the Morton patent purportedly discloses a "viral marketing system." The Examiner then appears to argue that a viral marketing system would involve receiving payment for services. However, even of this argument were persuasive, this argument would not suggest the sort of payment recited in independent claim 1.

Accordingly, the Morton patent does not disclose or suggest the first party content provider, or

the second party content recipient, or the third party payment receiver recited in independent claim 1. Therefore, independent claim 1 is patentable over the Morton patent.

There are additional reasons that independent claim 1 is patentable over the Morton patent.

For example, the Examiner asserts that it would have been obvious to modify and interpret the disclosure of the Morton patent to perform the functions that the Examiner quotes from independent claim 1. However, the Examiner does not indicate how the disclosure of the Morton patent is to be modified and interpreted.

Accordingly, the Examiner has not made out a *prima facie* case of obviousness. Consequently, independent claim 1 is patentable over the Morton patent.

As another example, and as discussed in previous responses, the Morton patent does not disclose or suggest a note that is posted on a computer of a first party content provider. Indeed, the Morton patent at most suggests downloading certain information to a potential customer while the potential customer (content recipient) interacts with an information service (content provider). However, there is no suggestion that such

information is in the form of a note or a note that is posted by any party disclosed in the Morton patent.

Because the Morton patent does not disclose or suggest a note that is posted by any party disclosed in the Morton patent, the Morton patent cannot disclose or suggest the method recited in independent claim 1.

For this reason also, independent claim 1 is patentable over the Morton patent.

As still another example, and as also discussed in previous responses, the Morton patent does not disclose or suggest providing payment to a third party based upon an activity involving a note posted at a first party content provider. The Examiner asserts that the Morton patent suggests providing such payment because "The invention has been described [in the Morton patent] primarily in the context of operating a viral marketing system in connection with an information service having a voice interface."

Applicants assume that the Examiner believes that a viral marketing system is one that derives revenues. However, even if this belief is warranted, deriving revenues based on the services offered by the information service 260 does not mean that revenues are provided to a third party based upon an activity engaged

in by a content recipient with respect to a note posted by a content provider. Indeed, the Morton patent does not suggest providing payment to a third party based upon any activity, much less based upon an activity engaged in by a content recipient with respect to a note posted by a content provider.

Because the Morton patent does not disclose or suggest providing payment to a third party based upon an activity engaged in by a content recipient with respect to a note posted by a content provider, the Morton patent cannot disclose or suggest the invention of independent claim 1.

For this reason also, independent claim 1 is patentable over the Morton patent.

Examiner's Response - The Examiner did not respond to any of applicant's previous arguments related to the patentability of independent claim 1.

Independent claim 29 is directed to a method in which a note is posted at a first party content provider, in which a note program code at a second party content recipient is executed so as to download the note without resort to a cut or copy operation and without downloading a web page of the content provider, wherein the content

recipient is a second party, and in which payment is provided to a third party based upon the note.

As discussed above, the Morton patent does not disclose or suggest a first party content provider, a second party content recipient, or a third party payment receiver.

Accordingly, independent claim 29 is patentable over the Morton patent.

As also discussed above, although the Examiner asserts that it would have been obvious to modify and interpret the disclosure of the Morton patent to perform functions quoted from independent claim 29 by the Examiner, the Examiner does not indicate how the disclosure of the Morton patent is to be modified and interpreted.

Accordingly, the Examiner has not made out a *prima facie* case of obviousness. Consequently, independent claim 29 is patentable over the Morton patent.

As further discussed above, and as discussed in previous responses, the Morton patent does not disclose or suggest a note that is posted at a first party content provider. Indeed, the Morton patent at most suggests downloading certain information to a potential customer

while the potential customer (content recipient) interacts with an information service (content provider). However, there is no suggestion that such information is in the form of a note or that the note is posted by any party disclosed in the Morton patent.

Because the Morton patent does not disclose or suggest a note that is posted by any party disclosed in the Morton patent, the Morton patent cannot disclose or suggest the method recited in independent claim 29.

For this reason also, independent claim 29 is patentable over the Morton patent.

As still further discussed above, and as also discussed in previous responses, the Morton patent does not disclose or suggest providing payment to a third party based upon a note posted at a first party content provider. The Examiner asserts that the Morton patent suggests providing such payment because "The invention has been described [in the Morton patent] primarily in the context of operating a viral marketing system in connection with an information service having a voice interface."

Applicants assume that the Examiner believes that a viral marketing system is one that derives revenues. However, even if this belief is warranted,

deriving revenues based on the services offered by the information service 260 does not mean that revenues are provided to a third party based upon a note posted by a content provider. Indeed, the Morton patent does not suggest providing payment to a third party based upon a note posted by a content provider.

Because the Morton patent does not disclose or suggest providing payment to a third party based upon a note posted by a content provider, the Morton patent cannot disclose or suggest the invention of independent claim 29.

For this reason also, independent claim 29 is patentable over the Morton patent.

Furthermore, the Morton patent does not disclose or suggest executing a note program code at a second party content recipient so as to download the note without resort to a cut or copy operation and without downloading a web page of the content provider.

For this additional reason, independent claim 29 is patentable over the Morton patent.

Examiner's Response - The Examiner did not respond to any of applicant's previous arguments related to the patentability of independent claim 29.

Independent claim 41 is directed to an arrangement of sites comprising first, second, and third sites. The first site is a content provider site coupled to a network, the first site executes first program code for the posting of a note thereat, the first site is operated by a content provider, and the content provider is a first party. The second site is a content recipient site coupled to the network, the second site executes second program code, the second program code is compliant with the note posted at the first site, the second site is operated by a content recipient, and the content recipient is a second party. The third site is operated by a third party, and the third site receives payment based upon the note posted at the first site.

As discussed above, the Morton patent does not disclose or suggest a first party content provider site, a second party content recipient site, or a third party payment receiver site as recited in independent claim 41.

Accordingly, independent claim 41 is patentable over the Morton patent.

As also discussed above, although the Examiner asserts that it would have been obvious to modify and interpret the disclosure of the Morton patent to perform functions quoted from independent claim 41 by the

Examiner, the Examiner does not indicate how the disclosure of the Morton patent is to be modified and interpreted.

Accordingly, the Examiner has not made out a *prima facie* case of obviousness. Consequently, independent claim 41 is patentable over the Morton patent.

As further discussed above, and as discussed in previous responses, the Morton patent does not disclose or suggest executing program code to post a note at a first party content provider site. Indeed, the Morton patent at most suggests downloading certain information to a potential customer while the potential customer (content recipient) interacts with an information service (content provider). However, there is no suggestion that such information is in the form of a note or that the note is posted by any party disclosed in the Morton patent.

Because the Morton patent does not disclose or suggest a note that is posted by any site disclosed in the Morton patent, the Morton patent cannot disclose or suggest the method recited in independent claim 41.

For this reason also, independent claim 41 is patentable over the Morton patent.

As still further discussed above, and as also discussed in previous responses, the Morton patent does not disclose or suggest providing payment to a third party site based upon a note posted at a first party content provider site. The Examiner asserts that the Morton patent suggests providing such payment because "The invention has been described [in the Morton patent] primarily in the context of operating a viral marketing system in connection with an information service having a voice interface."

Applicants assume that the Examiner believes that a viral marketing system is one that derives revenues. However, even if this belief is warranted, deriving revenues based on the services offered by the information service 260 does not mean that revenues are provided to a third party site based upon a note posted by a content provider site. Indeed, the Morton patent does not suggest providing payment to a third party site based upon a note posted by a content provider.

Because the Morton patent does not disclose or suggest providing payment to a third party site based upon a note posted by a content provider site, the Morton patent cannot disclose or suggest the invention of independent claim 41.

For this reason also, independent claim 41 is patentable over the Morton patent.

Furthermore, the Morton patent does not disclose or suggest execution of second program code at a second content recipient site that is compliant with a note posted at the first content provider site.

For this additional reason, independent claim 41 is patentable over the Morton patent.

Examiner's Response - The Examiner did not respond to any of applicant's previous arguments related to the patentability of independent claim 41.

Dependent claims 69, 71, and 73 recite that the note has an attachment characteristic such that the note is attachable to a window. The Examiner asserts that the Morton patent implicitly shows this feature. However, the Morton patent does not. The Morton patent does not disclose or suggest a note, and does not disclose or suggest attachment of a note.

The Examiner further asserts that these features of dependent claims 69, 71, and 73 would have been obvious because such features would have provided a viral marketing system in connection with an information service. Whatever a viral marketing system is, it is too

nebulous to support the kind of assertions made by the Examiner.

Accordingly, dependent claims 69, 71, and 73 are patentable over the Morton patent.

Dependent claim 70, 72, and 74 recite that the note has an attachment characteristic such that the note is attachable to a window by a drag and drop operation. The Examiner asserts that the Morton patent implicitly shows this feature. However, the Morton patent does not. The Morton patent does not disclose or suggest a note, does not disclose or suggest a note with an attachment feature payment, and does not disclose or suggest note attachment pursuant to a drag and drop operation.

The Examiner further asserts that these features of dependent claim 70, 72, and 74 would have been obvious because such features would have provided a viral marketing system in connection with an information service. Whatever a viral marketing system is, it is too nebulous to support the kind of assertions made by the Examiner.

Accordingly, dependent claims 70, 72, and 74 are patentable over the Morton patent.

Dependent claims 75, 76, and 77 recite that the note is posted on a web page of the content provider and

has a characteristic such that the note can be downloaded to the content recipient separately from the web page. The Examiner asserts that the Morton patent implicitly shows this feature. However, the Morton patent does not. The Morton patent does not disclose or suggest a note that is posted on a web page of the content provider, and does not disclose or suggest a characteristic such that the note can be downloaded to the content recipient separately from the web page.

The Examiner further asserts that these features of dependent claims 75, 76, and 77 would have been obvious because such features would have provided a viral marketing system in connection with an information service. Whatever a viral marketing system is, it is too nebulous to support the kind of assertions made by the Examiner.

Accordingly, dependent claims 75, 76, and 77 are patentable over the Morton patent.

On pages 7-11 of the Office Action, the Examiner rejected dependent claims 2-28, 30-40, 42-68, and 78-80 under 35 U.S.C. §103(a) as being unpatentable over the Morton patent.

The Examiner takes official notice that both the concepts and the advantages of the limitations of

dependent claims 2-28, 30-40, 42-68, and 78-80 were well known and expected in the art. Taking official notice is a much abused practice of the Patent and Trademark Office because it attempts to absolve examiners of finding art for claim limitations. Applicants challenge the Examiner to find the art that the Examiner says exists.

The Examiner cites In re Chevenard for the proposition that, if applicants fail to timely challenge the "Office Notice," applicants admits the official notice to be prior art. However, the Examiner has failed to properly follow MPEP 2144.03 because the Examiner has stated mere conclusions and has not explicitly set forth the technical line of reasoning that underlies the official notice. Therefore, applicants have not been permitted a chance to challenge to challenge the technical reasoning of the Examiner.

Moreover, whatever the relevance of In re Chevenard to the facts presented there, they are not pertinent here. Applicants have argued that the art cited by the Examiner does not show providing payment or providing payment based upon activity related to a note. Dependent claims 2-28, 30-40, and 42-68 relate to various examples of such payment and activity. Therefore,

applicants have effectively challenged the Examiner's Official Notice.

Furthermore, applicants have never admitted the Official Notice taken by the Examiner. Indeed, because of the patentability of the independent claims of this application both before and after the first amendment and this amendment, applicants did not deem it economical to traverse a rejection of the dependent claims.

Applicants do not admit the Examiner's official notice and indeed have argued that the Examiner's official notice is merely an attempt to avoid finding prior art.

Moreover, the Examiner goes on to opine that, assuming the existence of prior art that discloses the features of dependent claims 2-28, 30-40, 42-68, and 78-80, dependent claims 2-28, 30-40, 42-68, and 78-80 would have been obvious because such features would provide a viral marketing system. The Examiner is getting a lot of mileage out of that rather nebulous assertion.

However, the viral marketing system as described in the Morton patent does not suggest the limitations of dependent claims 2-28, 30-40, 42-68, and 78-80. It does not even hint at these features. The viral marketing system as described in the Morton patent

does not suggest the desirability of the features recited in dependent claims 2-28, 30-40, 42-68, and 78-80. At the very least, the Morton patent does not even hint that these features would add to the viralness of a marketing system.

Similarly, there is nothing in the "knowledge available to one of ordinary skill in the art" to suggest the limitations of dependent claims 2-28, 30-40, 42-68, and 78-80.

For all of these reasons, dependent claims 2-28, 30-40, 42-68, and 78-80 are patentable over the Morton patent.

Furthermore, dependent claims 78, 79 and 80 recite that the note is posted on a web page of the content provider and has a characteristic such that the note can be automatically downloaded to the content recipient separately from the web page. The Examiner asserts that the Morton patent implicitly shows this feature. However, the Morton patent does not. The Morton patent does not disclose or suggest a note that is posted on a web page of the content provider, and does not disclose or suggest a characteristic such that the note can be automatically downloaded to the content recipient separately from the web page.

The Examiner further asserts that these features of dependent claims 78, 79, and 80 would have been obvious because such features would have provided a viral marketing system in connection with an information service. Whatever a viral marketing system is, it is too nebulous to support the kind of assertions made by the Examiner.

Accordingly, dependent claims 78, 79, and 80 are patentable over the Morton patent.

CONCLUSION

In view of the above, the claims of the present application patentably distinguish over the art applied by the Examiner. Accordingly, allowance of these claims and issuance of the present application are respectfully requested.

Respectfully submitted,

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